

Meeting
February 28, 2017

BIA INDIAN TRADER REGULATIONS
TRIBAL CONSULTATION

TUESDAY, FEBRUARY 28, 2017

8:43 A.M. - 9:31 A.M.

MICCOSUKEE RESORT & GAMING

500 S.W. 177TH AVENUE

MIAMI, FLORIDA 33194

Meeting
February 28, 2017

1 TRIBAL REPRESENTATIVES PRESENT:
2 ELROD BOWERS, SEMINOLE TRIBE FLORIDA
3 PETE HAHN, SEMINOLE TRIBE FLORIDA
4 KEVIN WADZINSKI, POWERS PYLES - TUNICA BILOXI TRIBE
5 LOUISIANA

6
7 STAFF PRESENT:
8 MILES JANSSEN, COUNSELOR TO THE ASSISTANT SECRETARY OF
9 INDIAN AFFIARS
10 JAMES W. PORTER, OFFICE OF THE SOLICITOR, DIVISION OF
11 INDIAN AFFAIRS

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Meeting
February 28, 2017

1 CALL TO ORDER:

2 THE MEETING WAS CALLED TO ORDER AT 8:43 A.M. BY
3 MILES JANSSEN.

4 MR. JANSSEN: We're going to get started.
5 Let's start the triable consultation for the
6 advanced notice of proposal we're making on Indian
7 trader regulations. I guess we can start and
8 introduce ourselves. My name is Miles Janssen. I
9 am the counselor to the assistant secretary of
10 Indian affairs, a member of the central council of
11 Tlingit Indians in Alaska.

12 MR. PORTER: I'm Jim Porter from the
13 Solicitor's Office of the Department of Interior.

14 MR. JANSSEN: Those guys can introduce
15 themselves.

16 MR. WADZINSKI: Sure, I'll start. I'm Kevin
17 Wadzinski from the law firm in DC called Powers
18 Pyles Sutter & Verville. I'm here on behalf of the
19 Tunica Biloxi Tribe of Louisiana.

20 MR. BOWERS: I'm Elrod Bowers. I'm here on
21 behalf of the Chairman's Office Seminole tribe of
22 Florida.

23 MR. HAHN: Peter Hahn, Seminole Tribe of
24 Florida, treasurer.

25 MR. JANSSEN: Thank you. So I'll go over a

Meeting
February 28, 2017

1 little bit about what this consultation will be
2 about. So on December 8, 2016, Indian Affairs
3 published an advance notice of proposal making to
4 get input on whether to update 25 CFR Part 140 --
5 License Indian Traders. This was a direct response
6 for proposals inquiries the department received
7 over the past few years from tribes and Tribale
8 organizations, expressing interest in potentially
9 revising Part 140 and asking the department to take
10 a look at that. So right now, we're at the very
11 early stages of this process. We haven't drafted
12 any revisions yet because we really want to hear
13 from Indian Country on, basically, what -- how
14 Indian country uses, whether to leave the rule as
15 is, whether to repeal the rule, or to revise it,
16 and if the answer is to revise it, then what should
17 that revisions look like? So a little bit of
18 background on Part 140. So Part 140 covers trade
19 currently on Indian reservations. And if have you
20 a copy of the Part 140, it is pretty comprehensive.
21 Part 140's based on the lesser known Indian trader
22 statutes. The most recent of those statutes was
23 passed in 1903, but it goes back. One of the
24 statutes was also passed in 1876. So, obviously,
25 they're very old statutes. And those statutes saw

Meeting
February 28, 2017

1 to protect tribes from unlawful traders on their
2 reservations. So in era of Indian law that was
3 back then, that was the intent of those statutes.
4 So Part 140 of the regulations that we passed, were
5 first published in 1957 and then revised in 1965,
6 and then modified in a peace compassion in 1984,
7 and in the divisions of framework in which would be
8 BIA would issue license to anyone wanting to do
9 business on a reservation. The department
10 recognizes the tribes currently employ regulated
11 businesses operating in their borders -- in their
12 matters currently. So we wanted -- so we
13 understand that there might be a disconnect
14 currently. So our goals -- so we're looking into,
15 you know, whether and how Part 140 can be revised.

16 One, we want to look into modernizing the
17 implementation of the Indian trader statutes in a
18 way that it is consistent with the federal policies
19 of Tribe self-determination and self-governance,
20 supports current Tribe business practices, and
21 then also in a way that strengthens Tribe
22 economies around the Country. So a little bit
23 about the new administration and its priorities,
24 the specifics of the new administration priorities
25 to the Indian county are unknown, but we anticipate

Meeting
February 28, 2017

1 that they're going to align with the president's
2 priorities for economic development, so this,
3 obviously, would play into -- that. In the scope
4 of consultation, the handouts that you received
5 when you came in include a list of questions that
6 we would like input on, and they're the same exact
7 questions that were in the Advanced Notice of
8 Proposed Rulemaking, and we'll be going through
9 each of those questions today. But, briefly, we
10 address whether Part 140 should be revised in full
11 or in part and why; the federal involvement in
12 business practices; how to make sure that traders
13 in Indian country are reputable and
14 accountable; and then what type of trade and who
15 should be regulated? The Department's also
16 interested in learning how tribes currently
17 regulate trading, currently, their jurisdiction,
18 and how it revisions to this regulation could
19 promote that tribe viability in Indian Country, and
20 also to address any taxation issues. So we're also
21 accepting written comments and comments to -- the
22 period to that will run to April 10, so we're
23 comments until that day, April 10, 2017. But today
24 I'm here to listen and get your thoughts on how to
25 modernize the Indian trader registrations to hold

Meeting
February 28, 2017

1 tribe self-determination and economic development,
2 and I look forward to our discussion today. And
3 then, actually, one more thing, there might be some
4 questions and you may have heard on the two for one
5 requirement for regulations. That was an executive
6 order issued by the president that requires two
7 existing regulations to be repealed for every new
8 regulation that is promulgated. There have been
9 some questions of whether this would fall into
10 that. OMB's issued interim guidance and saying
11 that this rule only applies to rules that OMB
12 determines is significant, and in order to
13 determine whether a rule is significant, it's based
14 on executive order 12866, and it's based on
15 monetary policy thresholds; and ultimately OMB will
16 decide whether a rule is insignificant. And right
17 now, we're at such an early stage in the process,
18 we don't know whether our changes in those rules
19 would be significant. So currently that's
20 something down the road that we would have to look
21 at, but it's not in effect right now, but we have
22 to that we're thinking about. So with that, I will
23 open up the comment period to those. Thank you.

24 MR. HAHN: This was a lot of information to
25 kind of digest in a short period of time, from when

Meeting
February 28, 2017

1 I was notified. So now, is this addressing
2 taxation within Indian country as well?

3 MR. PORTER: I guess the most honest answer is
4 we're trying to figure out what it's going to
5 address. We recognize there's a final interest of
6 Indian country and the trader regs may be a
7 mechanism to help clarify those issues, but we
8 don't know yet, and so we're -- the history of a
9 taxation of business in Indian Country is complex,
10 and I'd say that we have adverse rulings already
11 that make it a challenge to figure out how to get
12 help through this process. So we're hoping that,
13 you know, good minds in Indian country can help us
14 figure out if there's some way that that could be
15 done. It's not obvious that it is, but it's not as
16 good for everybody.

17 MR. HAHN: Okay. And part of the reason that
18 I asked that is, there are certain products that
19 are trying to sell, for instance, fuel, cigarettes,
20 that are charged a state tax, so is there a
21 possibility by ending the CFR that they could
22 impact that to where there is less chance of
23 taxation or we'll go ahead and impose our own tax
24 that the states no longer collect it?

25 MR. PORTER: I don't think it would be

Meeting
February 28, 2017

1 responsible to say there's no chance, but I think
2 we all recognize that the laws that enable the
3 states to tax those things now -- it's not obvious
4 how our regs on this can change that legal
5 structure. We're all trying to figure out how that
6 might be done, but it's not -- I think we don't
7 think we can just say -- and if you're a licensed
8 trader, you will never pay state tax.

9 MR. HAHN: Right.

10 MR. PORTER: That seems like too counter to
11 practice.

12 MR. HAHN: All right.

13 So either way it's most likely that there
14 would become an agreement between the state and the
15 tribe and possibly these federal regulations.

16 MR. JANSSEN: So I think right now the -- like
17 I said before, I mean, we're at a point where we're
18 just trying to just kind of gather information. I
19 think the regulations can take many forms. And so
20 you're with --

21 MR. HAHN: Seminole Tribe of Florida.

22 MR. JANSSEN: Okay.

23 MR. HAHN: Peter Hahn, treasure of Seminole
24 Tribe of Florida.

25 MR. JANSSEN: That's all right.

Meeting
February 28, 2017

1 MR. WADZINSKI: Kevin Wadzinski. Let me just
2 say, first, I would not take the small audience as
3 a lack of interest in Indian Country on this issue.
4 I think you're continuing with Mardi Gras. You're
5 down South -- for starters. But also, I think that
6 there's a common misperception out there about this
7 particular law and these regulations. And -- I've
8 been practicing for 20-plus years and with a focus
9 on economic development in Indian country. And,
10 surprisingly, over those two decades, I've run
11 across these regulations only a few times. And I
12 think in part that's because they're there, they're
13 on the books. I don't think they're enforced. I
14 think if you looked around Indian country and look
15 at the business transactions taking place in Indian
16 Country, very few actually involve a licensed
17 Indian trader.

18 MR. PORTER: Do you guys know of any tribes
19 that still use licenses?

20 MR. WADZINSKI: Off the top of my head, I do
21 not, no. I know that our tribe, for instance,
22 issues its own vendors licenses for doing business
23 on the reservation.

24 MR. HAHN: And I think there's this a good
25 reason why that is the case. And I think if you go

Meeting
February 28, 2017

1 back and look at the original purpose of the
2 original laws, as well as the regulations, I think
3 the intent was the federal government said, "it
4 needs to regulate business on Indian reservations;"
5 a very paternalistic view in part to protect
6 Indians such that they don't get the short end of
7 the stick in the business transaction.

8 I think today, though, when you look at Indian
9 policy and the evolution of Indian laws promoting
10 the economic development, the focus is really on
11 creating an environment and an arena where
12 businesses can actually thrive on Indian
13 reservations and promoting the self-economic
14 determination. And it's not so much the focus on -
15 - let's not have bad actors come in. It's that
16 there's a realization now that tribes are fully
17 able to prevent that from happening. What my
18 client would like to see is other clients, as well
19 -- we need to use this opportunity to really change
20 the policy towards those new policy objectives,
21 meaningful economic development on reservations.
22 How does the federal government by regulations step
23 in to promote that? And I think as the gentleman
24 from the Seminole Tribe mentioned, dual taxation,
25 you don't see that in the headline of amending the

Meeting
February 28, 2017

1 Indian Trader's regulation. But it, definitely, in
2 my opinion, is part of that overall objective of
3 promoting economic development. It's really hard
4 to have viable businesses on reservations when
5 those non-tribal entities are subject to dual
6 taxation. And I know that firsthand with my
7 client. So if there's any lie that the federal
8 government can address that issue, and I'm not
9 saying what that means because I don't really know
10 that. And as, Miles, you mentioned, we really
11 don't know what this -- what new policies are going
12 to come out of this administration. I think it's
13 just too new on this administration to know. But
14 my clients and I personally would like to see that
15 as part of this review. And hopefully it'll find
16 its way in some form or another in the regulations,
17 should they be amended.

18 MR. JANSSEN: So I guess we can go through
19 some of the questions that were proposed in the
20 Advance Notice of Proposed Rulemaking. And we can
21 kind of start backwards in terms of the questions,
22 just because we have been talking about issues
23 related to tax.

24 So one question I would have is: What
25 services do tribes currently require to individuals or

Meeting
February 28, 2017

1 entities doing business in Indian country? What roles
2 do tax revenues play in providing such services?

3 MR. HAHN: Say that again.

4 MR. JANSSEN: So I guess, what services do
5 tribes currently provide to individuals or entities
6 doing business in Indian country? And what role do
7 those tax revenues play in providing those
8 services?

9 MR. HAHN: As far as services right now, our
10 tribe's primary business is the sale of fuel, the
11 sale of cigarettes, primary things that are taxed
12 currently.

13 MR. PORTER: But those are the tribes'
14 businesses.

15 MR. HAHN: Yes, we have -- we have all the
16 trading stations. We have trading posts that we
17 sell gas at. They operate right off of one of the
18 main streets here in Hollywood where we have both
19 tribal and non-tribal patrons that come in and
20 purchase gas, as well as other products there at
21 the trading post. And the state does receive a
22 fuel tax for that. What we're trying to provide,
23 also, in addition to that, we have to accrue how
24 much of those fuel sales are actually tribal
25 members, so that makes it a little difficult at

Meeting
February 28, 2017

1 times to make sure that some purchases were made by
2 tribal members versus non-tribal members.

3 MR. PORTER: One of the reasons that doesn't
4 fit, obviously, within the context of this statute
5 of regulatory scheme is that this is about non-
6 Indian, non-tribal traders conducting business on
7 the reservation. So what -- you know, we have to
8 figure out how that applies to the tribe's own
9 business working on the reservation.

10 MR. WADZINSKI: And as far as -- and, Miles, I
11 think your question is how do taxes result in
12 services provided to non-tribal entities doing
13 business in Indian country? And that's correct. I
14 mean, you break it down a little bit. You first
15 ask the question, who is the taxing authority?
16 Obviously, the tribes can tax, but I think you'll
17 find that many do not such that the only taxing
18 authority exercising its jurisdiction is the non-
19 tribal government. The other question is: What
20 services are actually being provided to the non-
21 tribal business and which government is providing
22 those services? And in my experience, this is not
23 happening to a particular client, it's just
24 observation in Indian country is that a bulk of the
25 services are provided by the tribal government.

Meeting
February 28, 2017

1 Those would include such things as emergency
2 response, fire and safety, police. Some tribes
3 have various health departments that do
4 inspections, those types of things. And I think,
5 you know, a great example, which I'm sure you're
6 aware of undoubtedly here in more detailed tribes,
7 the Tulalip tribe in their development of their
8 reservation and their ongoing issues with dual
9 taxation.

10 MR. PORTER: Yeah. And they actually issue
11 licenses, trader's licenses -- well, sorry -- they
12 don't issue -- the BIA issues them to the traders
13 there, so I want to run close. We had a
14 consultation last weekend, and it's --

15 MR. WADZINSKI: It's very honest of you
16 because if tribes elect not to exercise their
17 taxing authority and there's good reason it's not
18 to exercise their sovereign authority. It's just
19 if they do, those businesses, absent some type of
20 agreement with the other taxing jurisdiction, will
21 leave. And for good reason because now they're
22 operating expenses in this area is doubled.

23 MR. PORTER: How common or rare is it, in your
24 experience, for tribes who rely on sewer, water,
25 and electric, of course, coming off-reservation on

Meeting
February 28, 2017

1 to the reservation?

2 MR. WADZINSKI: Again, it depends on the area
3 and the location of the reservation, vis-another
4 municipality. They oftentimes will seek provided -
5 - those services provided by the tribe in a rural
6 setting.

7 MR. PORTER: Yeah.

8 MR. HAHN: Depending on which area as well as
9 you have water treatment because we have a lot of
10 facilities, but there's less water used at rural
11 county, whoever's at that location, municipality.

12 MR. PORTER: Right.

13 MR. JANSSEN: So it's for the infrastructure
14 and services that tribe provides. Are you able to
15 provide any tax revenues that collect to provide
16 such services in any structure? Or is that
17 provided in these other types funds?

18 MR. HAHN: Typically, the services that are
19 provided, whether it's water or utilities, the
20 tribe picks up the bill, or most of the bill, the
21 majority of it. There's no tax that's imposed for
22 the trucks coming on, and there's no taxes imposed
23 for the water that's running through the pipes.
24 There's no additional services not passed on to the
25 members. It's not passed on the user. It's

Meeting
February 28, 2017

1 typically the tribe that picks up that bill.

2 MR. JANSSEN: So I guess we can also kind of
3 start going question by question. So the first
4 question that we propose is: Should the federal
5 government address trade currently in Indian
6 Country through an updated 25 CFR Part 140, and
7 why? Congress granted the Department regulatory
8 and regular trading in Indian Country, specifically
9 the Indian trader statutes, "The right of the
10 department and the authority to make rules
11 specifying the kind and quantity of goods that may
12 be sold to Indians and the prices of which such
13 goods could sold as," 25 USC 261. "To establish
14 rules and regulations governing who is the proper
15 person to engage trading on Indian reservations for
16 the protection of the Indians," 25 USC 262. And we
17 know that currently tribes regularly trade on
18 reservation under tribal laws and authorities
19 without federal involvement. We also acknowledge
20 our trust responsibly to charters. I ask, again,
21 how can we update these regulations in a way that
22 kind of recognizes the facts? You know, one is,
23 business is currently done on the reservation
24 versus kind of historical past. How can we make
25 those ends meet?

Meeting
February 28, 2017

1 MR. HAHN: I mean, I'm sure other tribes as
2 well, but we have own regulations that we follow,
3 which is very similar to the state for issuing of a
4 business license. So for any vendor that wants to
5 do business on the reservation, within our
6 reservations, they have to follow our policies and
7 our procedures to obtain a business license through
8 us. So just having one from the State of Florida
9 doesn't necessarily guarantee that they're going to
10 receive ours. They still have to receive a tribal
11 business license as well. It may put a little
12 burden on the people, however, we have our own
13 regulations to follow. So I don't see any reason
14 why the Department of Interior has to decide when a
15 trader's going to meet the policy of the
16 reservations. We have our own policies and
17 regulations to follow.

18 MR. JANSSEN: Would you be able to -- just
19 maybe if you would like to kind of explain in
20 further what -- you know, when a person applies for
21 a tribal business license, I guess, what are the
22 steps? What do they have to go through to get
23 that?

24 MR. HAHN: Okay. Part of the steps is, after
25 they approach the appropriate tribe and inform us

Meeting
February 28, 2017

1 that they have a business that they would like to
2 propose, they then go through various departments
3 in order to qualify for it, in part, ensuring that
4 whatever business they're going to be doing, the
5 need isn't going to conflict with something else we
6 have here because we don't want to oversaturate the
7 markets. And after we find out that, yes, we have
8 a purpose for that business, we then make sure that
9 they have their insurance, make sure that they have
10 their various things in place, that they're in good
11 standing with the state and the federal government.
12 After they have reached the requirements, they then
13 apply for a business license, those business
14 licenses, and take a few other steps and ask a few
15 questions for the scope of service, what exactly it
16 is they're going to be providing, how it is they
17 feel that it can benefit the tribe through the
18 process?

19 MR. PORTER: Is there anything about the
20 jurisdiction of the tribal court through the
21 license?

22 MR. HAHN: Not typically. There are -- it
23 depends on what the business is as to how those
24 could be handled. And so usually it falls within
25 the state and other jurisdictions are going to be

Meeting
February 28, 2017

1 held. However, we -- we're not confined to the
2 tribal court system. I mean, there's a lot of
3 business in the tribal court system and we have it
4 in place now. And we're working on putting all
5 those -- all the regulations in place, so I'm sure
6 once we have that in place, they want to go over
7 it. We can go over that into our regulations.

8 MR. WADZINSKI: Going back to the same
9 question. I think you're going to hear from the
10 Indian Country that one option that you have, and I
11 think this will be the preferred option coming to
12 Indian Country, is that if you should revise the
13 regulations, they would acknowledge the policy of
14 tribal regulations as to who should be permitted or
15 allowed to do business within that particular
16 tribe's jurisdiction. I think you also see that
17 the tribes, in fact, are doing that, not just
18 Seminole, but other tribes across the country. And
19 perhaps some of this started with Indian gaming and
20 certain federal requirements of tribes allocating
21 where it's regulated various entities doing
22 business in that context. But it is certainly --
23 in my observation, it certainly expanded to other
24 industries as well. And I think you'll find that
25 tribes have to approach it in different ways. And

Meeting
February 28, 2017

1 the level of tribal regulation varies from policies
2 and practice that it's doing due diligence, doing
3 background checks, even if it's not gaming related,
4 to structures where they're actually licensed
5 applications and formal license that process. And,
6 Jim, to answer your question, I certainly seen in -
7 - a number of different circumstances, where tribes
8 will require the entity doing business with the
9 tribe to acknowledge that entering into a potential
10 relationship subject to the jurisdiction of the
11 tribe. And now it's in tribal court's
12 jurisdiction.

13 MR. JANSSEN: So another question we had is:
14 Are there certain components to the existing rule
15 that should be kept, and if so, why? For instance,
16 if the department has issued licenses, should there
17 be a grandfather clause? We currently have
18 licenses that the department's issued under Part
19 140. And if no section should be kept, we would
20 like information on why and what would an entirely
21 new rule look like? The BIA normally issues
22 licenses in the rule. What would the federal
23 involvement be -- with the understanding,
24 obviously, the tribes are doing licensing? How --
25 is there any ideas on that?

Meeting
February 28, 2017

1 MR. WADZINSKI: I think -- I can't speak on
2 behalf of any particular client just because, quite
3 frankly, we haven't gone through the process long
4 enough to get to those recommendations. Having
5 said that, as far as with a grandfather-type
6 provision, I think you'll find for the licensed
7 Indian traders at that time if they would like to
8 see, perhaps they would view it as having a vested
9 right in their ability to conduct business pursuant
10 to that existing license. Again, we're at that
11 stage where you're just looking at feedback, so you
12 haven't identified your options. But one potential
13 option would be through a grandfather provision
14 that phases out over time and ideally switches to
15 the exclusive tribal jurisdiction, as well as
16 licensing. It can also happen, as far as some of
17 the provisions, you may want to think about
18 deleting in entirety. I know that glancing over
19 some of the provisions that it appears that some of
20 them are a bit outdated or perhaps even
21 inconsistent with existing law; just recalling the
22 provision dealing with the sale of alcohol and I
23 think some of that has changed where tribes have
24 approved ordinances. Presumably, you may have like
25 a restaurant franchise come in, and they're

Meeting
February 28, 2017

1 actually serving alcohol. But it appears that
2 these things could happen at Indian traders, so I
3 think you may find provision like that where
4 they're a bit outdated or perhaps inconsistent with
5 superseding law.

6 MR. PORTER: The whole section is just; we're
7 all violating it every day.

8 MR. WADZINSKI: Can I say about the question?
9 Do you know when the last time the regulations were
10 enforced?

11 MR. JANSSEN: No, I do not.

12 MR. WADZINSKI: I do not either. And there
13 are some pretty hefty fines imposed for individuals
14 who violate Indian traders' laws, and I was just
15 curious to find out whether or not the Department
16 -- when the last time it was that the Department
17 brought an action.

18 MR. PORTER: I have no idea. I think it's
19 part of the incentive -- why we can't just let this
20 go away and just ignore it -- we can't just
21 continue to ignore it because it's telling us to do
22 some really important things, and so if we're not
23 going to do those things, we probably need to deal
24 with the regulatory scheme.

25 MR. WADZINSKI: And it causes practitioners in

Meeting
February 28, 2017

1 this area to wake up in the middle of the night and
2 say, "Oh, my God."

3 MR. PORTER: Yes. And I would assume that,
4 you know, there's one or two circumstances where
5 traders aren't currently being licensed. I would
6 hope that soon that violations of the licensing
7 scheme will get, you know, enforced. Only, we're
8 not issuing any licenses, so the opportunity say
9 historically you don't have a license. I can't
10 imagine the last time -- you know, decades ago.

11 MR. WADZINSKI: And on that point, I think
12 there are some real practical hurdles to uniform
13 enforcement. I don't know how the Department would
14 possibly have the capabilities to police this,
15 especially in light of the fact that economic
16 development on Indian reservations has changed so
17 dramatically since these reservations were first
18 brought on to them.

19 MR. PORTER: That was something I was curious
20 about. There are so many different sets of
21 circumstances in Indian Country. I mean, every
22 tribes got a different set of circumstances, and so
23 in a regulatory scheme like this has been, you
24 know, how could anything really be appropriate for
25 all of those different services? And I don't know

Meeting
February 28, 2017

1 if it was -- if it would make sense that we do
2 carry forward with some kind of revised scheme to
3 have a venue of different things that might apply
4 to different circumstances or something as simple
5 as a tribe can opt in or out of its application on
6 their reservation, or whatever. But it just seems
7 really hard to craft something that would make
8 sense in every possible tribe scenario. That would
9 be helpful information to have.

10 MR. HAHN: That kind of goes back to the self-
11 determination, and so it's the aspect by a lot of
12 tribes to make the regulations their own policies.
13 The Department of Interior saying, well, we
14 acknowledge that tribes are making the regulations
15 and maybe it is best suited for them to decide
16 what's going to be better for their economic
17 development. But you've got to support it.

18 MR. WADZINSKI: I would agree with that in
19 part because it reflects what's really happening
20 out there. And if a tribe is comfortable in its
21 regulating who's doing business with the tribe on
22 the reservation, they're going to have the best
23 sense of what they need to ensure that people that
24 are not allowed to do business with them are not
25 going, in fact, going to be allowed to do business

Meeting
February 28, 2017

1 with them.

2 MR. JANSSEN: So I'll just keep going down the
3 list of questions. Some of these might be --
4 sounds like I'm repeating myself. So "How can
5 revisions to the existing rule ensure that persons
6 who conduct trade are reputable and that there are
7 mechanisms in place to address traders who violate
8 Federal or Tribal law?" So the best way the
9 address that comments is keeping the place
10 regulating trade. I mean, this is their
11 jurisdiction currently. How can the rule ensure
12 there are reputable traders in Indian Country,
13 ensure the violation of Federal and Tribal law are
14 properly addressed? Anyone have any thoughts on
15 that?

16 MR. HAHN: I mean, once again, the tribal
17 self-governs so that we maintain what it is the --
18 my tribe, for instance, if something happens to
19 where a vendor violates any of our policies, or
20 does some type of business that we don't agree
21 with, then we'll make sure that we exclude them
22 from our current business. Whereas the Department
23 of Interior, unless you have an agent sitting on
24 each of those reservations that's going to sit and
25 filter through every one of those businesses and

Meeting
February 28, 2017

1 then they're going to look at all the details of
2 what's going on, and then it's going to be reported
3 and any other mishaps or anything that could be
4 construed as bad business, and it's not necessarily
5 done all through the federal guidelines. So, I
6 mean, that may produce an additional burden on the
7 Department of Interior requiring diligently going
8 through and making process of reading through all
9 those documents, making sure that these financials
10 are in order, making sure that these businesses are
11 actually doing what they're supposed to, making
12 sure that if there was a violation of some sort,
13 how was it going to be dealt with at that point
14 forward. And on top of that, if you don't have --
15 all the additional workload, and you're going to
16 have additional staff that you're going to be
17 required to hire in other places, or there's going
18 to be a huge backlog ten years later when you get
19 to something that happened.

20 MR. JANSSEN: Is there a way for the
21 department to -- I would say -- so the tribe,
22 obviously, makes the determination that some would
23 be not proper to take action. Is there a way -- do
24 you have any ideas of any way the Department could
25 help assist the tribe in that process or to

Meeting
February 28, 2017

1 strengthen a tribal order? Obviously, the tribe
2 has to -- you know, is making those determinations,
3 but can the department provide assistance somewhere
4 in the tribal process?

5 MR. WADZINSKI: To answer that question and go
6 back to the original question, if the regulations
7 were to provide that a violation of a tribal laws
8 is also a violation of the regulation, then you
9 have a potential of other enforcement mechanism.
10 And I think, you know, tribes -- again, in that
11 thinking on behalf of the client, we very welcome
12 that because the threat of enforcement in tribal
13 court, I think, is one thing, but the threat of
14 enforcement by federal officials is another. So
15 making a violation of a tribal law regulation
16 governing trade business on Indian reservations is
17 also a violation of the federal regulations, I
18 think, one way that would be helpful as in the role
19 that the federal government is playing here. When
20 you originally asked the question, I thought well,
21 perhaps some type of database or registry of
22 individuals that should be precluded from doing
23 business in Indian Country across the board --
24 maybe something like that would make sense, but in
25 thinking through it, I'm left with the thought that

Meeting
February 28, 2017

1 I don't know really how large that database would
2 be. And just looking at it the source, if that
3 information comes from the federal government
4 itself, then does the limit get to the federal
5 government? I'm not sure you would have a whole
6 lot of individuals on that list; not because there
7 have not been violations out there, but just
8 because I think there are a few enforcement
9 actions. That type of database, in order for it to
10 be effective, would rely on tribes submitting that
11 information to you all, and I don't know where a
12 tribe stands on that.

13 MR. PORTER: Do you guys have a sense of the
14 non-tribal businesses conducting business on the
15 reservation? How many of them are corporations
16 versus privately owned? Kind of an obscure
17 question.

18 MR. HAHN: The majorities that do business
19 with us are private or sole proprietorships in that
20 setting. There are -- I mean, there are some that
21 could be franchise-ish, but it's few and far
22 between for them.

23 MR. WADZINSKI: My guess there is that, you
24 know, for the real small mom-and-pop type of
25 businesses, maybe individuals. The larger types of

Meeting
February 28, 2017

1 businesses are going to be corporations and limited
2 liability companies.

3 MR. PORTER: Home Depot, you have big box
4 stores on the reservations.

5 MR. JANSSEN: Okay. Moving on to question
6 four: "How do tribes currently regulate trade on
7 Indian Country?" I know we've been asked that many
8 times already now. "How might provisions in 25 CFR
9 Part 140 help tribes regulate trade in Indian
10 Country?"

11 So I guess we're looking for specific
12 information and suggestions including language on
13 how the federal government involves those tribes
14 and currently comprehensively regulate trade as
15 well as those tribes that do not do so presently.
16 And, like I said -- I mean, we're accepting
17 comments until April 10. I know it's kind of --
18 it's a complicated issue to, you know, come here
19 and just read and have answers. If you have any
20 ideas just off the top of your head, that would be
21 helpful.

22 MR. WADZINSKI: Again, I think I mentioned
23 this earlier. How do the regulations acknowledge
24 not only the business of the tribal regulation, but
25 also the privacy of that? I think we would need

Meeting
February 28, 2017

1 the -- one recommendation suggests that we hear a
2 lot from Indian County.

3 MR. JANSSEN: Another question is: "What
4 types of trade should be regulated, and what types
5 of traders should be subject to regulations?" So
6 the parties receive proposals from various tribes
7 and tribal organizations pertaining to the Indian
8 trader regulations. Many of those proposals
9 suggest a trade that should be regulated under Part
10 140 should include not only commercial activities,
11 but mineral and energy development in any form of
12 natural resource extraction or agriculture. And so
13 should it -- so that's a -- that's a question that
14 we have, what should be the scope of trade, I
15 guess? Should it be just kind of we think of it
16 as, you know, commerce or should it include energy,
17 agriculture, along that case?

18 MR. HAHN: Again, I think it should kind of be
19 up to that tribe to regulate what a business is
20 going on in that area. For instance, we don't deal
21 with oil, but other tribes do, so for us to make
22 regulations for other tribes on how to handle the
23 oil, it wouldn't be fair for us to impose our
24 opinions and our views on some other tribe.

25 MR. WADZINSKI: And I would suggest that you

Meeting
February 28, 2017

1 examine the existing laws that already do regulate
2 different forms of commerce in Indian Country.
3 Obviously, they need gaming regulatory act is a
4 very comprehensive law that regulates gaming a
5 number of different ways. That would be helpful
6 because then it would eliminate inconsistencies or
7 additional burdens. Vendors providing services in
8 that industry are already regulated on the tribal
9 level, the federal level, and depending on what
10 context as the state level. I would imagine that
11 Indian Country would not want yet another layer of
12 duplicative regulations there. As far as the
13 broader, what is the scope of this type of
14 revision? I think that is an issue not only for
15 how you go about defining commerce and whether that
16 includes business as selling goods, providing
17 services, or whether it broader to include
18 agricultural issues, mineral, energy issues. But I
19 think there's another component to it as well, we
20 touched upon that earlier, and that is, is it broad
21 enough to cover governmental action that directly
22 impacts commerce on the reservation and
23 specifically the issue of taxation of the traders
24 on the reservation? So I think how broad in scope
25 should this be involved. So that's two separate,

Meeting
February 28, 2017

1 you know.

2 MR. JANSSEN: I guess another question.
3 "Should a rule define the type of trader conducting
4 business within any tribe?" In draft proposals,
5 the department has received from outside of
6 organizations. The department has received
7 recommendations in a revised rule applied to any
8 person conducting trading in Indian Country,
9 including non-Indians. So I guess, what should be
10 -- should the type of trader be defined? Should it
11 be anybody? Any thoughts on that?

12 MR. WADZINSKI: I guess my thought would be
13 that if there's a role of actual regulation by the
14 federal government, that I don't think the status
15 of the trader is all that relevant, as is that
16 individual's suitability, for lack of a better
17 word, to engage in business with the tribe.

18 MR. JANSSEN: And the last question I have is:
19 "How might revision to regulations promote economic
20 viability and sustainability in Indian Country?"
21 How do the rules facilitate economic activity in
22 Indian Country and tribal economic self-
23 sufficiency?

24 Something we talked about a little bit before.
25 Any additional thoughts?

Meeting
February 28, 2017

1 MR. WADZINSKI: You know, I think that's a
2 great question. I think the first step in
3 answering that question is to examine what are the
4 impediments and hurdles to economic self-
5 sufficiency on reservations? And that goes to the
6 issue that we just discussed. What should be --
7 how broad should this be? In my experience, again,
8 an issue of taxation by entities that don't often
9 provide all of the services for which they -- the
10 service is provided to the taxing entity, that
11 should be address because I think that will cause -
12 - or will allow -- for businesses that want to
13 engage in business on the Indian reservation to
14 identify what their actual cost of doing business
15 is going to be. So I would hope that the ultimate
16 outcome is here is a revision that addresses that
17 particular issue. Again, I think we're too early
18 in the process to understand what is likely or even
19 possible to end up having a final regulation. But
20 I would recommend -- to start at that point.

21 MR. HAHN: And, again, with taxation coming
22 from the state is the state provides any of those
23 tax monies or tax dollars back to reservations to
24 cover the infrastructure in any aspect. So unless
25 the road is a main road that the state uses or that

Meeting
February 28, 2017

1 the county uses, the tribe, in essence, has to pay
2 for that to cover the cost of repairing roads and
3 various other improvements. There is no taxation
4 that we can actually impose in that aspect because
5 if we do, we may actually drive business away and
6 then the prices would increase and then they will
7 find somewhere else that's cheaper to go.

8 MR. JANSSEN: So those are all the questions
9 that I have. Those are questions, as I said
10 before, that were published in the Advanced Notice
11 of Proposal of Meeting, so that if you go to the
12 federal registration notice, those questions will
13 be there.

14 We are accepting comments on this issue until
15 April 10, 2017. We welcome any comments,
16 suggestions, and proposals on the revisions to
17 trader regulations. So I guess we can -- at this
18 point we can take a break and see if anyone else
19 comes. We'll wait a few minutes, but if not, I
20 appreciate you guys coming today and talking about
21 this issue. Thank you.

22 MR. PORTER: It was short, but very helpful.

23 MR. HAHN: Thank you for your time. I hope
24 the issue progresses that we have a little more
25 interest and more attendance, and that we can start

Meeting
February 28, 2017

1 the board so that you can actually get feedback
2 from other tribes in different situations, that may
3 have additional input that we could provide.

4 MR. PORTER: Need to check the holiday
5 calendar.

6 MR. WADZINSKI: Yeah. And on behalf of my
7 clients, thank you and we appreciate you taking a
8 look at this regulation to see how, perhaps, it
9 could be revised to truly promote the economic
10 development on the Indian reservations.

11 MR. JANSSEN: Thank you.

12 MR. PORTER: Thank you.

13 (MEETING CONCLUDED AT 9:31 A.M.)

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Meeting
February 28, 2017

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C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, JAMIE LYNN SAPP, Court Reporter and Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did report the foregoing proceeding, and that said transcript is a true record of the testimony given by the witness.

I FURTHER CERTIFY that I am not of counsel for, related to, or employed by any of the parties or attorneys involved herein, nor am I financially interested in said action.

Submitted on: April 18, 2017

JAMIE LYNN SAPP
Court Reporter, Notary Public